

JOHN F. DAVIS, CLERK

vs.

Telephone 753 5430

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RCW 2.32.320

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7 IN THE SUPREME COURT OF THE UNITED STATES

8 JERRY DOUGLAS MEMPA,

9 petitioner,

10 vs.

11 B. J. RHAY, as Superintendent of the Washington State
12 Penitentiary at Walla Walla, Washington,

13 Respondent.

14
15 NO. 16
16 Oct. Term 1967

17 WILLIAM EARL WALKLING,

18 petitioner,

19 vs.

20 WASHINGTON STATE BOARD OF PRISON TERMS AND PAROLES

21 Respondent.

22 NO. 22
23 Oct. Term 1967

24 TO: THE HONORABLE EARL WARREN, CHIEF JUSTICE AND ASSOCIATE
25 JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

26 In accordance with your request to the writer during
27 my presentation of oral argument in the above captioned
28 matters before the court on October 12, 1967, I respectfully
29 submit the information more specifically set forth below
30 in fulfillment of your inquiries concerning the law of the
31 State of Washington.

QUESTIONS PRESENTED

During the course of the presentation of oral argument by counsel for the respondent, supplemental information was requested to be supplied by respondent's counsel on the following subjects:

- (1) The law of the State of Washington relating to the verbatim reporting of proceedings in courts of record.
- (2) Alternative methods for the preparation of and certification of a record on appeal other than a verbatim transcript of the testimony and evidence in judicial proceedings.

LAWS OF WASHINGTON RELATING TO COURT REPORTERS
AND REPORTING OF TESTIMONY AND PROCEEDINGS IN
THE SUPERIOR COURTS.

RCW 2.32.200 relating to the duties of an official court reporter, provides:

It shall be the duty of each official reporter appointed under RCW 2.32.180 through 2.32.320 to attend every term of the Superior Court in the county or judicial district for which he is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his attorney, requests the services of the official reporter, the presiding judge shall grant such request, or upon his own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his services with respect to any portion of the proceedings therein, which notes shall be filed in the office of the Clerk of the Superior Court where such trial is had.

RCW 2.32.240 relating to the transcribing of the shorthand notes of the official reporter and the payment of the costs thereof, provides:

When a record has been taken in any cause as provided in RCW 2.32.180 through 2.32.320, if the court, or either party to the suit or action, or his attorney, request a transcript, the official reporter shall make, or cause to be made, with reasonable diligence, full and accurate transcript of the testimony and other proceedings, which shall, when certified to as hereinafter provided, be filed

1 with the clerk of the court where such trial is
2 had for the use of the court or parties to the
3 action. The fees of the reporter for making
4 such transcript shall be fixed in accordance with
5 costs as allowed in cost bills in civil cases by
6 the supreme court of the state of Washington, and
7 when such transcript is ordered by any party to
8 any suit or action, said fee shall be paid forthwith
9 by the party ordering the same, and in all cases
10 where a transcript is made as provided for under
11 the provisions of RCW 2.32.180 through 2.32.320
12 the cost thereof shall be taxable as costs in the
13 case, and shall be so taxed as other costs in
14 the case are taxed: PROVIDED, That when the
15 defendant in any criminal case shall present to the
16 court satisfactory proof by affidavit or otherwise
17 that he is unable to pay for such transcript, the
18 court may order said transcript to be made by the
19 official reporter, which transcript fee therefor
20 shall be paid by the state upon submission of
21 appropriate vouchers to the clerk of the supreme
22 court.

13 ALTERNATIVE METHODS FOR THE PREPARATION OF A
14 RECORD ON APPEAL IN THE STATE OF WASHINGTON

15 In Livermore v. Northwest Airlines, Inc., 6 Wn.2d

16 1, 17, 106 P.2d 578 (1940) the Supreme Court of the State
17 of Washington set forth a comprehensive exposition of the
18 rules governing the preparation and certification of an
19 adequate transcript of proceedings (known as a statement
20 of facts in Washington procedure) for the purpose of the
21 prosecution of an appeal.

22 At page 17 of the Opinion of the Supreme Court of
23 the State of Washington in the cited case, the court set
24 forth the following rules:

- 25 1. When the proposed statement has been filed, the
26 respondent must, if he feels that the statement
27 is deficient, propose his amendments, unless to
28 require him to do so would actually shift the
29 burden of preparing the statement to the respondent.
- 30 2. The trial court shall not be compelled to certify
31 a statement of facts when it knows it is not true.
3. After a hearing is had and the court determines
that the statement is not sufficient, the court
may strike foreign matters or compel the appellant
to supplement the record so that it speaks the
truth.

4. The law assumes that the court knows whether the proposed statement is accurate or not. In other words, the law is that the court remembers the evidence and proceedings in a case that it has tried.
 5. The court may call to its aid the litigants or even subpoena third parties in order that the statement may be corrected.
 6. If the court believes that the statement has omitted certain material evidence or proceedings, it should order the insertion thereof in the record and continue to so order until it could properly make its certificate in the language of the statute.
 7. A party applying for a settlement of a statement of facts cannot be compelled to furnish a transcript of the reporter's notes.
 8. The court is not bound by the contents of the reporter's notes. These are only an aid to the court in settling the statement of facts. The statement of facts may be in narrative form, and need not be in the form of a verbatim reproduction of all that transpired during the trial of the cause.
 9. The burden of furnishing a proper and satisfactory statement is upon the proposer, and the court may call upon him from time to time to supply needed portions of the facts evidenced at the trial.
 10. The statement of facts may be stricken in cases from which it appears that no attempt was made by appellant to furnish a complete statement containing all the material facts, matters, and proceedings occurring upon the trial, and in those cases in which the appellant intentionally casts upon his opponent any considerable portion of his statement through proposed amendments.
 11. Where an issue of fact arises between the trial court and counsel as to what occurred at the trial, this court will refer the issue to another judge to inquire into and report facts to us. (Emphasis ours)
- In Grady v. Schneekloth, 51 Wn.2d 1, 5 - 8, 314 P.2d 930 (1957); Cert. den. 357 U.S. 939, 78 S.Ct. 1391, 2 L.Ed.2d 1554 which was a habeas corpus proceeding, the Supreme Court had occasion to discuss the propriety and adequacy of the submission of a narrative form of a statement of facts as opposed to a verbatim transcript of proceedings. In this respect, the court, in its opinion quoting in part from Griffin v. Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct.

385 stated:

"We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants. For example, it may be that bystanders' bills of exceptions or other methods of reporting trial proceedings could be used in some cases."

.....

This state has never required the statement of facts on appeal to contain a stenographic transcript of the entire evidence taken at the trial. Rule on Appeal.... dealing with appeals in criminal cases, makes the civil procedure applicable to criminal appeals....

Livermore v. Northwest Airlines, 6 Wn.2d 1, 106 P.2d 578, is a complete exposition of the procedural law respecting a statement of facts. We there said specifically, "A party applying for a settlement of a statement of facts cannot be compelled to furnish a transcript of the reporter's notes." We further said, "The statement of facts may be in narrative form, and need not be in the form of a verbatim reproduction of all that transpired during the trial of the cause." In Palin v. General Constr. Co., 45 Wn. 2d 721, 277 P. 2d 703, the court again reiterated the statement in the Livermore case, "A party is not required to embody in his proposed statement of facts a transcript of the reporter's notes taken on the trial."

A proposed statement of facts is deemed agreed to if no amendments are proposed within ten days after service and filing. If a narrative statement of facts is filed in good faith, the trial court may be compelled by this court's mandate to certify it.

A trial judge is not required to certify any statement which is untrue, but with respect to a proposed statement of facts filed in good faith to which he does object, he must indicate what amendments are necessary to make it correct, and he cannot escape this responsibility by saying that he does not know....

A stenographic transcript of the reporter's notes of the evidence taken at the trial is unnecessary in any case, civil or criminal.... A narrative statement satisfies every requirement in that decision, (Griffin v. Illinois, supra) and, moreover, if an appellant specifies the point or points which he desires to present on appeal, he may go up on a short record which also may be in narrative form. If a complete record is required on appeal, a

1 convicted defendant has only to show a reason
2 therefor, whereupon the law authorizes the trial
3 court to order it at public expense.

4 Even in the absence of a court reporter and the
5 resulting consequence of their being no record of what trans-
6 pired at the Probation Revocation Hearing involving the
7 petitioner WALKLING, it is clear that if he had desired to
8 appeal to the Supreme Court of the State of Washington from
9 the results of that hearing, and there is no indication
10 that he desired to appeal, a record could have been prepared
11 in the form of a narrative statement as provided for by the
12 rules and decisions of the Supreme Court of the State of
13 Washington quoted above.

14 WHEREFORE, the respondent respectfully submits the
15 foregoing supplemental statement of authorities trusting
16 that it is sufficiently adequate to provide the information
17 requested by the Court.

18 JOHN J. O'CONNELL
19 Attorney General of the
20 State of Washington

21 *Stephen C. Way*
22 STEPHEN C. WAY
23 Assistant Attorney General
24 Counsel for respondents.
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